

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4574 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NAVIN ISHWARLAL RAJGOR

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR SJ DAVE, AGP for Respondent Nos.1, 2 & 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the Act of 1985') by the order dated 24-3-2000 passed by the District Magistrate, Kutch-Bhuj and he has been declared

as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, order of detention has been passed on 24-3-2000 relying upon the earlier order of detention, but copy of the same has not been supplied to the detenu. It was further stated that ten statements have been recorded by the authority, but copies of those statements have also not been supplied to the detenu and, therefore, the right of the detenu of making an effective representation has been affected. Learned APP, S.J.Dave has fairly admitted the same.

4. It has been held in a judgment reported in 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

"Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

"It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

It is the duty of the authority to supply copy of the statements and documents with the detention order. Here in this case, copy of the earlier order of detention as well as the statements of ten witnesses, though relied upon by the authority in passing the impugned order of detention, have not been supplied to the detenu. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the

order of detention. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed.

The impugned order of detention dated 24-3-2000 passed against the detenu is hereby quashed and set aside. The detenu-Navin Ishwarlal Rajgor is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA, J.)

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